

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON**

ENRIQUE ZACARIAS DIAZ,

Plaintiff,

v.

D. LOYA,

Defendant.

Case No. 2:22-cv-1288-YY

**ORDER ADOPTING FINDINGS AND
RECOMMENDATION**

Consolidated with Related Cases:

ENRIQUE ZACARIAS DIAZ,

Plaintiff,

v.

**OREGON DEPARTMENT OF
CORRECTIONS, and J. DOUGLAS,
Correctional Officer,**

Defendants.

Case No. 2:22-cv-1311-YY

ENRIQUE ZACARIAS DIAZ,

Plaintiff,

v.

SPELMAN,

Defendant.

Case No. 2:22-cv-1395-YY

Michael H. Simon, District Judge.

Plaintiff Enrique Diaz, an adult in custody representing himself, has filed three 42 U.S.C. § 1983 actions, which have been consolidated. Defendants have filed a consolidated motion for summary judgment, arguing for dismissal of Plaintiff's claims on the ground that Plaintiff failed to exhaust his administrative remedies before filing suit. United States Magistrate Judge Jolie A. Russo issued Findings and Recommendation in this case on June 10, 2024. Judge Russo recommended that this Court grant Defendant's motion for summary judgment.¹ No party has filed objections.

Under the Federal Magistrates Act (Act), the court may "accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate." 28 U.S.C. § 636(b)(1). If a party objects to a magistrate judge's findings and recommendations, "the court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made." *Id.*; Fed. R. Civ. P. 72(b)(3).

If no party objects, the Act does not prescribe any standard of review. *See Thomas v. Arn*, 474 U.S. 140, 152 (1985) ("There is no indication that Congress, in enacting [the Act], intended to require a district judge to review a magistrate's report to which no objections are filed."); *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (en banc) (holding that the court must review *de novo* magistrate judge's findings and recommendations if objection is made, "but not otherwise").

¹ See ECF 23 (motion for summary judgment) in Case No. 2:22-cv-1288-YY; ECF 24 (motion for summary judgment) in Case No. 2:22-cv-1311-YY; and ECF 23 (motion for summary judgment) in Case No. 2:22-cv-1395-YY.

Although review is not required in the absence of objections, the Act “does not preclude further review by the district judge[] *sua sponte* . . . under a *de novo* or any other standard.” *Thomas*, 474 U.S. at 154. Indeed, the Advisory Committee Notes to Rule 72(b) of the Federal Rules of Civil Procedure recommend that “[w]hen no timely objection is filed,” the court review the magistrate judge’s findings and recommendations for “clear error on the face of the record.”

No party having made objections, this Court follows the recommendation of the Advisory Committee and reviews Judge You’s Findings and Recommendation for clear error on the face of the record. No such error is apparent. Accordingly, the Court ADOPTS Judge You’s Findings and Recommendation (ECF 38 in Case No. 2:22-cv-1288-YY; ECF 40 in Case No. 2:22-cv-1311-YY; and ECF 38 in Case No. 2:22-cv-1395-YY). The Court GRANTS Defendants’ motions for summary judgment (ECF 23 in Case No. 2:22-cv-1288-YY; ECF 24 in Case No. 2:22-cv-1311-YY; and ECF 23 in Case No. 2:22-cv-1395-YY) and dismisses these cases without prejudice.

IT IS SO ORDERED.

DATED this 30th day of July, 2024.

/s/ Michael H. Simon
Michael H. Simon
United States District Judge